WP(C) 5866/2007
BEFORE
HON'BLE MR. JUSTICE RANJAN GOGOI

The petitioner is the owner of a Nursing Home in the Sivasagar Town which is carrying on business in the name and style of 'M/S D.H.L. Health Services'. Over an incident of death that had occurred in the Nursing Home on 19.9.2007, a complaint was made to the Deputy Commissioner, Sivasagar regarding inadequate facilities in the said Nursing Home. The Deputy Commissioner deputed a team of experts (doctors) to investigate into the matter and on receipt of the report which is to the effect that the Nursing Home of the petitioner lacks in requisite infrastructure, an order dated 28.9.2007 was passed by the Deputy Commissioner suspending the functioning of the Nursing Home and directing the Joint Director of Health Services, Sivasagar to seal the same. In the order dated 28.9.2007, it has been mentioned that since the owner of the establishment was not available at the time of enquiry, the order had to be passed ex-parte. However, opportunity was given to the owner of the establishment to appear before the Deputy Commissioner as well as the Joint Director of Health Services, Sivasagar with all relevant documents.

According to the petitioner, on 3.10.2007 and 11.10.2007, representations were filed pointing out the true and correct facts before the Joint Director of Health Services, Sivasagar as well the Deputy Commissioner, Sivasagar. In the said representations the petitioner prayed for revocation of the suspension of the functioning of the Nursing Home. Contending that the said representations have not been disposed of and further that the Nursing Home is duly licensed having all the requisite infrastructure, this writ petition has been filed calling into question the order dated 28.9.2007 passed by the Deputy Commissioner.

Though the learned counsel for the petitioner has made valiant attempt to pursuade the Court that the Nursing Home of the petitioner is duly licensed and conforms to the norms laid down under the Assam Health Establishment Act, 1993 and furthermore, that the Nursing Home has the required infrastructure and facilities, the Court is of the view that the aforesaid questions essentially being questions of fact, the same should receive attention of the authority in the first instance. In any case, by the impugned order dated 28.9.2007, opportunity was given to the petitioner to appear before the Deputy Commissioner as well as the Joint Director of Health Services along with all relevant documents. It is the petitioner's own pleaded case that such an approach was made notwithstanding which, no order has been passed by the aforesaid two authorities.

In the above circumstances, the Court is of the view that no opinion should be expressed by the Court with regard to the entitlement of the petitioner to run the Nursing Home. Rather, it is the Joint Director of Health Services, Sivasagar and the Deputy Commissioner, Sivasagar who should decide the mater in terms of the order dated 28.9.2007. Such a decision will be required to be taken by the aforesaid authorities within a period of two weeks from the date on which the petitioner appears before the said authorities. The authorities will naturally decide the matter on the basis of such documents as may be placed by the petitioner and after giving the petitioner an opportunity of hearing.

This will dispose of the writ petition.